IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

WP(C).No. 28272 of 2007(N)

AGAINST I.A.397/06 IN I.A.398/06 IN OS.104/2005 of III ADDL.SUB COURT, KOZHIKODE
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PETITIONERS: PETITIONERS/PLAINTIFFS
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1. MUSTHAFA, AGED 47 YEARS,
S/O.ABOOBACKER, ACHARATH PARAKATTU,
MALIKAPURAYIL, NEDUNGOTTOOR AMSOM DESOM,
KOZHIKODE TALUK.

2. VAYALIL PARAMBATH SAHIR,
AGED 35 YEARS, S/O MUHAMMED HAJI,
NAGARAM AMSOM DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.K.M.FIROZ

RESPONDENTS: RESPONDENTS/ DEFENDANTS 1 TO 3 &ADDL.4TH DEFENDANT
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1. KORAVANTAKAM PARAMBIL SIVADASAN,
47 YEARS, S/O PADMANABHAN,
PUTHIYANGADI AMSO DESOM,
KOZHIKODE TALUK.

2. KORAVANTAKAM PARAMBIL OMANA,
32 YEARS, D/O PADMANABHAN,
PUTHIYANGADI AMSOM DESOM,
KOZHIKODE TALUK.

3. KORAVATAKAM PARAMBIL SUNIL PRASAD,
30 YEARS, S/O PADMANABHAN,
PUTHIYANGADI AMSOM DESOM, KOZHIKODE TALUK.

4. K.P.SHAKEELA, D/O.K.P.ABU,
KIZHAKKE PALLIKKAL HOUSE,
KANNATHUPARA AMSOM DESOM, ERNAD TALUK,
MALAPPURAM DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/09/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 28272 OF 2007

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Dated this the 24th day of September, 2007.

J U D G M E N T

This writ petition is preferred against the orders of the Subordinate Judge's Court, Kozhikode as Exts.P8 and P9. The suit is one for specific performance of the contract and according to the plaintiff during the pendency and subsistence of an agreement to sell, the defendants had sold the property in favour of third persons and therefore their junction is necessary for a proper disposal of the case. The learned Subordinate Judge initially directed the party to produce a copy of the document and thereafter relying upon a decision of the Apex Court reported in **Kasturi v. Iyyam Perumal (AIR 2005 SC 2813)** dismissed the application.

2. I am afraid that the learned Subordinate Judge has not properly applied his mind to the facts of the case. In the decision of the Apex Court the two tests ordered to be complied with are (1) There must be a right to some reliefs against such party in respect of the controversy involved in

the proceeding and (2) No effective decree can be passed in the absence of such party. Apex Court held that applying the said two tests in the said case the third party or strangers to contract are not necessary parties as an effective decree can be passed in their absence as they had not purchased the contracted property from the vendor after the contract was entered into. They were also not necessary parties as they would not be affected by the relationship between the appellant purchaser and the respondent vendor. So the Hon'ble Apex Court was dealing with a situation where the proposed impleadment was by a party who had nothing to do either with the plaintiff or the defendant in the case. But, there, the party set up a title in himself and therefore the Court held that the above two tests may not be attracted and hence rejected the application for impleadment. But, in the case on hand what the plaintiff wants to bring to the notice of the Court is that after an agreement has been entered into between the plaintiff and the defendant for sale, the defendant had transferred the property in favour of third

persons and therefore their junction is necessary for a proper disposal of the case. The situation contemplated in the Apex Court decision and in the present case are totally different and therefore I consider that a re-look into the matter in the light of the decision relied upon by the learned Subordinate Judge is necessary by himself. Therefore, the order under challenge is set aside and the matter is remitted back to the learned Subordinate Judge for fresh consideration after hearing both sides. Since I am disposing of the matter now at the admission stage I direct the learned Subordinate Judge to give notice to the defendant before finally disposing the matter. In the light of this, the learned Subordinate Judge is bound to defer the trial and he an proceed with the same only after disposal of the application in accordance with law.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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